

## RULEMAKING NOTICE FORM

Notice Number 2016-206

Rule Number He-P 4003.01 (various)

1. Agency Name & Address:

**NH Department of Health and Human Services  
Division of Public Health Services  
Radiological Health Section  
29 Hazen Drive  
Concord, NH 03301**

2. RSA Authority:

**RSA 125-F:5,V**

3. Federal Authority:

**Section 274 of the Atomic  
Energy Act of 1954 as  
amended**

4. Type of Action:

Adoption           

Amendment **X**

Repeal           

Readoption           

Readoption w/amendment           

5. Short Title: **Definitions NH Rules for the Control of Radiation**

6. (a) Summary of what the rule says and of any proposed amendments:

**He-P 4003.01 lists the definitions of defined terms that are used in He-P 4000 the chapter for “NH Rules for the Control of Radiation.” He-P 4003 is scheduled to expire 5/23/2024. The Department of Health and Human Services, Radiological Health Section (DHHS/RHS), proposes to amend He-P 4003.01 to update and add the definitions listed below to ensure consistency with Nuclear Regulatory Commission (NCR) definitions.**

**DHHS/RHS proposes to amend:**

- **He-P 4003.01(o) “Assigned protection factor”;**
- **He-P 4003.01(v) “Byproduct material”, specifically (v)(5)a.;**
- **He-P 4003.01(ec) “Radiological health section” and renumbered as (ed);**
- **He-P 4003.01(ep) “Sealed source” and renumbered as (er);**
- **He-P 4003.01(fi) “Survey”; and renumbered as (fk); and**
- **He-P 4003.01(fp) “Unrefined and unprocessed ore” and renumbered as (fr).**

**DHHS/RHS proposes to add new definitions:**

- **He-P 4003.01(ae) “Commencement of construction”; and**
- **He-P 4003.01(co) “Lost or missing licensed material or sources of radiation”.**

6. (b) Brief description of the groups affected:

**Groups affected by this proposal include all individuals and entities that are licensed or registered under He-P 4000.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<b>RULE NUMBER</b>	<b>STATUTE OR FEDERAL REGULATION</b>
He-P 4003.01 (o), (v) intro., (v)(5) intro., (v)(5)a., (ae), (co), (ed), (er), (fk), & (fr)	10 CFR 20.1003; 10 CFR 30.4; and 10 CFR 40.4

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**  
Address: **Dept. of Health and Human Services** Phone #: **271-9374**  
**Administrative Rules Unit** Fax#: **271-5590**  
**129 Pleasant St.** E-mail: [catherine.bernhard@dhhs.nh.gov](mailto:catherine.bernhard@dhhs.nh.gov)  
**Concord, NH 03301**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Wednesday, November 30, 2016**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Monday, November 21, 2016 at 9:00 AM**

Place: [\*\*DHHS Brown Bldg., Room 232, 129 Pleasant St., Concord, NH\*\*](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **16:221**, dated **10/17/16**

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

**2. Cite the Federal mandate. Identify the impact of state funds:**

The State of New Hampshire is an agreement state with the US Nuclear Regulatory Commission (NRC), pursuant to Section 274b of the Atomic Energy Act of 1954, as amended. As such, the state is required to have a program in place that is adequate and compatible with federal regulations. There is no effect on state funds associated with the proposed rules.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To Independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.**

## PART He-P 4003 DEFINITIONS

**Amend He-P 4003.01, effective 5-23-14 (Document # 10504), by amending existing paragraph(o) and clause (v)(5)a., inserting new paragraphs (ae) and (co), and renumbering the existing subsequent paragraphs, and amending and renumbering existing paragraphs (ec), (ep), (fi), and (fp) as (ee), (er), (fk), and (fr), so that He-P 4003.01 (o), (v) intro., (v)(5) intro., (v)(5)a., (ae), (co) (ee), (er), (fk), and (fr) are cited and read as follows:**

He-P 4003.01 Definitions.

(o) “Assigned protection factor (APF)” means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly trained and fitted users. Operationally, the inhaled concentration may be estimated by dividing the ambient airborne concentration by the APF.

(v) “Byproduct material” means:

(5) Any discrete source of naturally occurring radioactive material, other than source material, that:

a. The Governor declares by order to be byproduct material after the United States Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 ~~to the public health and safety~~; and

(ae) “Commencement of construction” means taking any action defined as “construction” or any other activity at the site of a facility subject to the rules in this part that has a reasonable nexus to radiological health and safety.

(co) “Lost or missing licensed material or sources of radiation” means licensed or registered sources of radiation whose location is unknown or that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(ee)(ed) “Radiological health section (RHS)” means the radiological health section of the division of public health services, in the NH department of health and human services, formerly referred to as bureau of radiological health.

(ep)(er) “Sealed source” means ~~radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling~~ any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

(fi)(fk) “Survey” means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of radioactive material or radiation generating equipment and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.

~~(fp)~~(fr) “Unrefined and unprocessed ore” means ore in its natural form prior to any processing such as grinding, roasting, beneficiating, or refining. The term processing does not include sieving, encapsulation of ore, or preparation of samples for laboratory analysis.

#### APPENDIX

RULE NUMBER	STATUTE OR FEDERAL REGULATION
He-P 4003.01 (o), (v) intro., (v)(5) intro., (v)(5)a.,(ae), (co), (ed), (er),(fk), & (fr)	10 CFR 20.1003; 10 CFR 30.4; and 10 CFR 40.4